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August 5, 2019

VIA ECF

The Honorable Robert W. Lehrburger  
United States District Judge  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 10007

Re: *Chevron Corp. v. Donziger*, 11 Civ. 0691 (LAK) (S.D.N.Y.)

Dear Judge Lehrburger:

I write respectfully as counsel for Chevron Corporation (“Chevron”) in response to Steven Donziger’s request to stay proceedings regarding his compliance with Paragraph 4 indefinitely or, in the alternative, to continue the August 7, 2019 evidentiary hearing for a period of three weeks. The Court should deny Donziger’s request and require him to appear for the August 7 hearing as scheduled. Donziger belatedly seeks a stay or continuance because he claims that he “cannot show up and openly testify in a civil proceeding when a criminal charge has just been filed on precisely the same issue” and he is seeking counsel to determine whether he “may need to assert [his] constitutional testimonial rights.” This is just another instance of the delay tactics Donziger has used throughout these post-judgment proceedings—including failing to file his appellate brief in accordance with the expedited deadline Judge Kaplan imposed, *see* Dkt. 2286—and the Court should reject it.

As an initial matter, the criminal contempt charges against Donziger do not relate to “precisely the same issue” as the scheduled hearing. Donziger has been criminally charged with failing to comply with Paragraph 4 “for all or part of the period commencing on March 8, 2019 and including May 28, 2019.” *See* Dkt. 2276 at 2–3. Thus, the criminal contempt period ends one day before Donziger submitted his first Paragraph 4 declaration on May 29, 2019. By contrast, the August 7 hearing will address whether Donziger is currently in compliance with Paragraph 4.

Additionally, Donziger should be required to appear at the hearing and formally assert his Fifth Amendment rights, to the extent that is what he intends to do. Donziger’s declarations and numerous public statements regarding the Paragraph 4 issues have waived his Fifth Amendment rights with respect to these topics. *See OSRecovery Inc. v. One Groupe Intern., Inc.*, 262 F.Supp.2d 302, 307 (S.D.N.Y. 2003) (Kaplan, J.) (citing *Mitchell v. United States*,

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526 U.S. 314, 321 (1999)) (“An individual may not use the Fifth Amendment as both a shield and a sword, answering some questions related to a particular topic in a given proceeding and avoiding others, as dictated by whim or self-interest.”). As a result, he should be required to appear, formally assert his Fifth Amendment rights, and explain why his prior conduct has not waived those rights. Only then would the Court be in a position to meaningfully consider them.

Respectfully,

/s/ Randy M. Mastro  
Randy M. Mastro

cc: All counsel of record